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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206-AN39

Program Fraud Civil Remedies: Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in U.S. Office of Personnel Management regulations implementing the Program Fraud Civil Remedies Act of 1986, with an initial “catch-up” adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance. It also makes subsequent annual catch up adjustments.

DATES: Effective August 23, 2018.

FOR FURTHER INFORMATION CONTACT: Austin Fulk, Office of the General Counsel, Office of Personnel Management, 1900 E St, NW, Washington, DC 20415, *Austin.Fulk@opm.gov*, (202) 606-1700.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (“the Act”). The Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking, and (2) make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties.

On July 19, 2016, OPM made an initial adjustment to the following civil monetary penalties to carry out the requirements of the 2015 Act, based on instructions found in Office of Management and Budget Memorandum M-16-06:

CFR citation	Description of the penalty	Current penalty	Catchup adjustment	Adjusted penalty
5 CFR 185.103(a)	Civil Penalty for False Claims	\$5,000	\$5,781	\$10,781
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	5,000	5,781	10,781

That rule took effect on August 1, 2016.

This rule takes into account adjustments for the year 2016 based on

inflation for that year. These calculations were made based on guidance contained in Office of

Management and Budget Memorandum M-17-11:

CFR citation	Description of the penalty	Adjusted penalty	2016 Inflation adjustment	2016 Inflation adjusted amount
5 CFR 185.103(a)	Civil Penalty for False Claims	\$10,781	\$176	\$10,957
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	10,781	176	10,957

This rule makes additional adjustments for the year 2017 based on inflation for that year. These

calculations were made based on guidance contained in Office of

Management and Budget Memorandum M-18-03:

CFR citation	Description of the penalty	Adjusted penalty	2017 Inflation adjustment	2016 Inflation adjusted amount
5 CFR 185.103(a)	Civil Penalty for False Claims	\$10,957	\$223	\$11,181
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	10,957	223	11,181

This final rule is being issued without prior public notice or opportunity for public comments. The 2015 Act’s amendments to the Inflation Adjustment Act required the agency to adjust penalties initially through an interim final rulemaking, which did not require the agency to complete a notice and

comment process prior to promulgating the interim final rule. The amendments also explicitly required the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553 (the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment). The

formula used for adjusting the amount of civil penalties is given by statute, with no discretion provided to OPM regarding the computation of the adjustments. OPM is charged only with performing ministerial computations to determine the amount of adjustment to the civil penalties due to increases in

the Consumer Price Index for all Urban Consumers (CPI-U).

II. Calculation of Adjustment

The Office of Management and Budget (OMB) issued guidance on calculating the initial catch-up adjustment. See February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*. Under this guidance, OPM has identified applicable civil monetary penalties and calculated the catch-up adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI-U.

The Office of Management and Budget published guidance on adjusting penalties based on the increase in the CPI-U between October of 2015 and October of 2016, as well as between October of 2016 and 2017. See December 16, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*; December 15, 2017 Memorandum for the Heads of Executive Departments and Agencies, from Mick Mulvaney, Director, Office of Management and Budget re: *Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*. This guidance provided OPM with the level to which civil penalties should be adjusted as annual inflation adjustments following the initial necessary update to comply with the 2015 Act. Although OPM published the initial interim final rulemaking to adjust its relevant penalties in compliance with the 2015 Act, OPM has not yet issued the 2017 or 2018

adjustments. As a result, the increases associated with the first two annual inflation adjustments mandated under the 2015 Act after the original adjustment are combined here.

III. Executive Order Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a not significant regulatory action, under Executive Order 12866. E.O. 13771.

This final rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

A. Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually. No discretion is allowed. Thus, the RFA does not apply to this final rule.

B. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

C. Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532)

This rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

D. E.O. 12630, Takings

This rule does not have takings implications.

E. E.O. 13132, Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

F. E.O. 12988, Civil Justice Reform

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system;
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

G. E.O. 13175, Consultation With Indian Tribes

In accordance with Executive Order 13175, OPM has evaluated this rule and determined that it has no tribal implications.

H. Paperwork Reduction Act

This rule does not involve any collections of information subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

List of Subjects in 5 CFR Part 185

Program fraud civil remedies, Claims, Penalties, Basis for civil penalties and assessments.

Office of Personnel Management.

Jeff T.H. Pon,
Director.

For the reasons set forth in the preamble, OPM amends part 185 of title 5 of the Code of Federal Regulations as follows:

PART 185—PROGRAM FRAUD CIVIL REMEDIES: CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 185 continues to read:

Authority: 28 U.S.C. 2461 note.

§ 185.103 [Amended]

■ 2. Section 185.103 is amended as follows:

- a. In paragraph (a) introductory text, revise “\$10,781” to read “\$11,181”.
- b. In paragraph (f)(2), revise “\$10,781” to read “\$11,181”.

[FR Doc. 2018–15764 Filed 7–23–18; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–SC–17–0073; SC18–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2018–2019 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and allotment percentages of Class 1 (Scotch) and Class 3 (Native) spearmint oil for the 2018–2019 marketing year. This rule also removes references to past volume regulation no longer in effect.

DATES: Effective August 23, 2018.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of spearmint oil producers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes quantities and percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil for the 2018–2019 marketing year, which began on June 1, 2018.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to §§ 985.50, 985.51, and 985.52, the Order requires the

Committee to meet each year to consider supply and demand of spearmint oil and a marketing policy for the ensuing marketing year. When such considerations indicate a need to establish or maintain stable market conditions through volume regulation, the Committee recommends salable quantity limitations and producer allotments to regulate the quantity of Far West spearmint oil available to the market.

According to § 985.12, “salable quantity” is the total quantity of each class of oil that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The total industry allotment base is the aggregate of all allotment bases held individually by producers as prescribed under § 985.53(d)(1). The total allotment base is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provision of § 985.53(e). The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total industry allotment base for that same class of oil. The allotment percentage is the percentage used to calculate each producer’s prorated share of the salable quantity or their “annual allotment,” as defined in § 985.13.

The Committee met on October 25, 2017, to consider its marketing policy for the 2018–2019 marketing year. At that meeting, the Committee determined that, based on overall market and supply conditions, volume regulation for Classes 1 and 3 (Scotch and Native, respectively) spearmint oil is necessary. With a unanimous vote, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) and Class 3 (Native) spearmint oil of 760,660 pounds and 35 percent, and 1,307,947 pounds and 53 percent, respectively. The Committee also unanimously set its 2018–2019 marketing year trade demand estimate for Far West Scotch spearmint oil at 850,000 pounds, and for Far West Native spearmint oil at 1,306,605 pounds. Salable quantities and allotment percentages have been placed into effect each season since the Order’s inception in 1980.

Class 1 (Scotch) Spearmint Oil

The Committee’s recommended 2018–2019 marketing year salable quantity and allotment percentage for Far West Scotch spearmint oil represent a decrease from the previous year’s volume restrictions. The 2018–2019 marketing year salable quantity of 760,660 pounds is 13,985 pounds less than the 2017–2018 salable quantity of